Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
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Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
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	)	

Comments by Greg Weisiger on the Notice of Proposed Rule Making for the Universal Service Support Mechanism for Schools and Libraries

Table of Contents

I. Introduction

1. It is my distinct pleasure for the opportunity to respond to this much anticipated NPRM and assist the Commission in its difficult job of modifying E-Rate regulations to make the program more effective and efficient, while reducing waste, fraud, or abuse. As a frequent commentor and petitioner to the Commission on E-Rate issues, state E-Rate coordinator, consultant, and E-Rate applicant I look forward to the ensuing debate.

2. The Commission has stated the results it wishes to achieve with this NPRM. They are:

    1) to consider changes that would fine-tune our rules to improve program operation;

    2) to ensure that the benefits of this universal service support mechanism for schools and libraries are distributed in a manner that is fair and equitable; and

    3) to improve our oversight over this program to ensure that the goals of section 254 are met without waste, fraud, or abuse. We intend to build on the solid foundation we have established.

3. Let us consider the first goal of the NPRM to "fine-tune our rules" of the E-Rate program. Upon close examination of the program through this comment proceeding, the Commission may conclude that current E-Rate rules will require a complete overhaul rather that a few spark plugs and oil change. On the last point, E-Rate vendors and applicants may both agree that the program is not standing on a "solid foundation" as the NPRM asserts, but that termites may have infested some of the support beams. Only a full review of comments and replies will tell.

4. Whatever revelations are brought out through this comment process about specific FCC regulations or SLD policies, there is no question that the need for ongoing, reliable, equitable support for telecommunications services and Internet access in schools and libraries is paramount. I hope the debate on whether high speed access to Internet information resources is good or bad for education has ended and we can concentrate on an equitable funding solution to bring expensive broadband connections into schools and libraries. New E-Rate regulations and policies must also consider small schools and libraries discouraged and disenfranchised from participation by inherent complexities of this program. It is my hope the Commission will enact regulations that actually bring about reliable, equitable funding to schools and libraries, as Congress intended. It is also my sincere hope that the process can be dramatically simplified for small and marginal applicants.

II. Discussion

5. The Telecommunications Act of 1996 had several overriding principles for Universal Service support. In U.S.C. Title 47 Sec. 254 (a)(1)(b)(1), (2), (3), (4), (5), and (6) the guiding principles of the Universal Service Act gave the Commission effective direction. They are:

(1) Quality and rates

Quality services should be available at just, reasonable, and affordable rates

(2) Access to advanced services

Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) Access in rural and high cost areas

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) Equitable and nondiscriminatory contributions

All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) Specific and predictable support mechanisms

There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) Access to advanced telecommunications services for schools, health care, and libraries

Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h) of this section.

6. All suggestions for program revision in these comments will be based on these principles and the language contained in U.S.C. 254 (h), which specifically addresses Rural Health Care and the Schools and Libraries Programs under principle number six. Now that we have four years' experience with the E-Rate program, under a regulatory environment developed through the Federal-State

Joint Board, I believe many of the suggestions of the Federal-State Joint Board document can be revisited and eliminated in some cases.

7. In establishing a new efficient direction for the E-Rate program using the Act as guide, I hope the Commission's stated goals can also be achieved. Section 254 (h)(2)(A) of the Act, states that Commission rules to provide Advanced Services to schools and libraries shall be competitively neutral "…to enhance, to the extent technically feasible and **economically reasonable** (emphasis added), access to advanced telecommunications and information services…" I believe that the Commission's May 8 Order and subsequent Orders on Reconsideration neglected the notion of economical reasonableness, which has contributed to the FCC's perceived problem of waste, fraud, and abuse within the program. Throughout these comments the concept of economic reasonableness will be a common thread for E-Rate funding of telecommunications, Internet access, and internal connections.

8. To illustrate the lack of economic reasonableness with current FCC regulations and SLD policies, we need only look at a recent funding commitment in the current funding year (Year Four) to Roosevelt Elementary School District #66 (RESD#66) in Phoenix, Arizona. This school district was issued a funding commitment letter in early February 2002 for a total dollar amount over $19,000,000. This is a school district of only 18 schools and 11,000 students. Granted, it is a high poverty school district and deserving of E-Rate support, but $19,000,000 (more funding than some entire states) in a single year goes

far beyond the concept of economic reasonableness. In fact, in year three of the program, this school district received over $7,000,000 in funding commitments for internal connections. This school district has contracted to have fiber optic connections in every classroom, installation and maintenance of all equipment, broadband connections to all schools, and a top-of-the-line Quality of Service agreements. All these expenses are eligible and allowable under current E-Rate regulations; however, if all other 90 percent schools across the nation embraced such installations, demand for funding would explode to over $10 Billion. Make no mistake, I applaud RESD#66 for using existing E-Rate regulations to bring the best state-of-the-art technology to each student in the district. I sincerely hope they can install all that equipment before the deadline of September 30, or use some simple loopholes in program policy to extend installation time another year. I am sure their consultant can help. Also, because RESD#66 passed the new more stringent PIA review process, I am confident that the products and services ordered in no way wasted program resources.

9. Although the Congressional delegation from the state of Arizona may delight in the amount of E-Rate funding directed to their state, I am sure such funding was not the intent of the Act and appears to run counter to principle number five: Specific and predictable support mechanisms. Other applicants of similar need, but slightly lower discount rate would not receive funding at all due to the excessive funding this applicant. Indeed, numerous examples of large per capita funding for internal connections can be found in funding commitment

reports published on the SLD Web site.

10. For the sake of equity and preservation of program funds, the Commission must adopt reasonable standards for maximum levels of service. I suggest the maximum levels be somewhat generous, but short of fiber optic connections to each classroom and high dollar maintenance contracts. Also, because there is a wide disparity of service cost between applicants, the maximums should not be tied to a dollar figure but rather a level of service. Suggestions later in these comments address the issue of priority two funding.

11. In a dramatic departure from current regulation and policy, it is imperative that the SLD treat E-Rate applicants as customers. With five years of applications as a baseline, it is apparent that the universe of E-Rate applicants is a finite number – in the 40,000 range. Based on audits by SLD, GAO, and FCC, it is also apparent that the number of applicants attempting to defraud the program is a tiny fraction of the applicant universe. Yet, in any given year between 10 and 20 percent of E-Rate applications are denied, rejected, or reduced – many for simple procedural errors, such as a certain box on an E-Rate form either checked or not checked, a date missing, or a mistake by the Administrator. For the sake of E-Rate program viability and applicant support, these intolerant policies must be eliminated and greater latitude given to applicants, so long as there is no evidence of fraud or program abuse. The Federal Communications Commission can assist by directing the SLD to devote sufficient resources to adequately review applications and better assist applicants during PIA review.

The Universal Service Administrative Company (USAC) has stated something to the effect that the administrative expenses for the E-Rate program are the lowest of any other federal program, as a percentage of total funding. However, if applicants are not being adequately served by the administrator, one could argue that more administrative funding is necessary, or current funding should be redirected. The Commission can also overturn funding denials by the SLD on appeal for minor procedural violations that would not constitute fraud or abuse of the program.

12. Many appeals to the FCC asking forgiveness for simple mistakes have been denied because the FCC reasons: "In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures." This is exceedingly difficult when relevant rules and procedures continue to change and confound applicants. This attitude must change if the Commission expects to have broad support for continuation of the E-Rate program.

13. Finally, I salute the dedicated employees of the Schools and Libraries Division and the Federal Communications Commission who work tirelessly on serving the best interests of the E-Rate program. It is a difficult task to balance applicant needs with GAO and Congressional demands. Throw in contentious state representatives and vendor lawyers and the job becomes almost impossible.

III. Questions for Consideration

Eligible Services

14. The eligible services list currently employed by the SLD is incomprehensible to most applicants. It has been drastically changed in each of the first four years of this program, making it difficult for applicants to enter into efficient multi-year contracts with any confidence that services will be eligible from year to year. Just as applicants are confused by the Eligible Services List (ESL), so too are SLD reviewers. Applications are routinely denied because SLD reviewers mistakenly conclude items are ineligible. Franklin County, Virginia comes immediately to mind. Franklin County leased cable modems as part of an Internet access contract provided by the local cable company. SLD reviewers determined that more than 30 percent of the request constituted ineligible internal connections. Franklin was denied on appeal by the SLD, but ultimately prevailed with an appeal to the FCC, over a year after the initial denial.

15. Another example of ESL confusion that affected numerous applicants was the CISCO 2600 incident. When reviewing applications, SLD evaluated the CISCO 2600 router as a device used only as a dial-up router, which was ineligible under program rules. The router was placed on the SLD secret ineligible list (discussed later). In fact however, the 2600 made an excellent router for small LAN operations and was being used as such by many applicants. Until the problem was brought to SLD's attention, all applicants that included the CISCO routers were denied. Ultimately, the routers were

deemed eligible if applicants answered a series of questions correctly. Even then worthy applicants were still denied if the person answering the phone when SLD called inadvertently answered the questions incorrectly. When the CISCO 2600 situation was finally resolved in favor of applicants, all previously denied applicants had to have appealed their decisions to have funding restored. Applicants that did not appeal or failed to meet the 30 day appeal deadline were not funded, even though the denials were the result of a mistake at SLD.

16. Another example of SLD policies gone haywire is the policy for consortia. All participants of a consortium must verify that they are members of the eligible E-Rate consortium. Occasionally, SLD will call a member of the consortium to verify that entity is part of the consortium. Again, if a person answered the phone that was not knowledgeable of the consortium membership, SLD would conclude that that the consortium was attempting to defraud the program and deny funding for the entire consortium (this actually happened). Again, applicants that did not appeal or submitted appeals beyond the 30 day deadline were denied funding, no matter the circumstances for denial. If the E-Rate program is to remain viable, this type of situation absolutely must not continue.

17. By employing a more customer oriented SLD, tuned to applicant needs and based on past requests, it will be possible to reduce denials, reduce administrative costs, and reduce program waste. This will build confidence in the program on the part of applicants and ultimately greater support for the E-

Rate program under improved administrative policies.

18. Without question, the ESL must be made more clear for applicants. For Year Four the SLD instituted an "Eligible Services Framework" attempting to give applicants an overview of eligible products and services. This was a good gesture on SLD's part to simplify eligible services list confusion; however, the framework did not achieve its intended goal. I suggest the SLD secret ESL (discussed later) be made public. Also, for reasons discussed later, I urge the Commission not to make the secret ESL part of the online Form 471.

How would the SLD handle services and equipment that are eligible only if used in certain ways?

19. Contained within the ESL are numerous products that are conditionally eligible. In fact, many would argue that ***all*** products and services on the ESL are conditionally eligible, as they must be used in certain ways or by certain parties to receive funding. Take the most basic of telecommunications services – basic telephone service as an example. According to the ESL, basic telephone service is eligible for E-Rate support; however, telephone lines connected to a bus garage are not eligible for funding and must be excluded from funding requests. Indeed, verification of basic telephone service applications has been a significant administrative burden for both SLD and applicants. Vendors have also discovered that excluding discounts only on certain telephone lines or services is a major billing headache.

20. So long as E-Rate regulations require segregation of certain services and equipment, the application evaluation process will remain cumbersome, time

consuming, and inefficient. One specific suggestion is to make basic telephone service eligible for all uses by an applicant. This will significantly reduce administrative costs and reduce application evaluation time while having an insignificant impact on funding demand.

21. Another example of conditional funding is Local Area Networks (LANs). Within school buildings and libraries LANs are absolutely eligible as internal connections. Conversely, LANs located in administrative buildings are only eligible for funding if the network of shared services passes through the administrative building (and LAN) to serve eligible buildings. Either make administrative building LANs always eligible or never eligible. Eliminate the ambiguity for all equipment and services.

22. One suggestion may be to include eligible percentages when the secret products and services list is published. For example, Network Interface Cards (NIC) that reside in workstations are not eligible for funding; however, when wireless NICs are used in workstations, the little antennas within or attached to the NICs are eligible. If the ineligible percentage is listed with the product, applicants would immediately know how much to list as eligible for funding. This suggestion may not reduce administrative costs and would not make the program any simpler, but it would reduce confusion on the applicant side and set a benchmark for application review.

23. This may a good time to address the thorny issue of a definition for “Internet Access” which has confounded applicants from the start of this program.

Under the current (ESL), Internet access provided from a non-common carrier, is limited to "Basic conduit access." There has been some debate as to what exactly this phrase means but through other entries in the Internet Access category, we know that Voice over IP, video distance learning, Web casting, and virtual private networks are not eligible for support as "Internet Access" provided by a non-common carrier. I believe the Commission and SLD need to review the definition of Internet access and be much more explicit in their regulations and policies. Virtually every user of Internet services in a school or library has received audio, or moving pictures on their computers. If it is the intent of the Commission to exclude audio or moving pictures from Internet E-Rate eligibility, then all applicants funded under the Internet category of service are violating the rules.

24. According to the ESL, video distance learning is eligible only as a telecommunications service. However, video distance learning can and is being offered directly through the Internet. Are schools receiving video distance learning through broadband Internet connections purchased (leased) from an ISP in violation of E-Rate regulations? I certainly hope not.

25. I suggest the Commission embrace evolution of the Internet and concede that it is much more than static pictures and text. This would also be in keeping with Sec. 254 (c)(1):

> Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and

information technologies and services.

26. To facilitate offering of more broad services from non-common carriers, I suggest the Commission consider the language of the "telecommunications and information technologies and services." to mean information technologies and services are divorced from telecommunications and therefore could be offered by non-common carriers.

27. There is a parallel proceeding (Docket No. 02-33) seeking comments on this very issue. The existence of this proceeding indicates that the Commission is considering the way it looks at the Internet, Internet Service Providers, and the services that can be provided from this new industry. Personally, I think it is too late for the FCC to attempt to control the Internet as if it were a telecommunications service and impose telecom type regulations on the industry. The notion that the FCC can now regulate providers of "Information Services" – the thousands of independent ISPs providing Internet access is simply absurd. As I have pointed out to Commissioners and commission staff in previous letters and emails (April 24, 1999 to Glenn Reynolds and Linda Armstrong and May 26, 1999 to Linda Armstrong and Dorothy Attwood), there is a significant problem collecting Universal Service contribution forms (let alone contributions) from many non-telephone telecommunications companies. Any attempt to regulate the wild west of ISPs will fall flat.

Should the SLD post an online list of specific pre-approved product or services that applicants could choose from on their 471?

- If so, how often would the list need to be updated?

- How would the FCC ensure that maintaining such a list would not inadvertently limit applicants' ability to take advantage of products and services newly introduced to the marketplace?

- How could applicants and vendors best provide input to the SLD on an ongoing basis regarding what specific products and services should be eligible?

28. I understand a list of products and services previously evaluated for eligibility has been compiled by the Program Intregrity Assurance (PIA) team of the SLD. Numerous requests have been submitted to make this list public, but each has been refused. I believe it is time to release this list for applicants and vendors to review and possibly challenge PIA decisions BEFORE those items are chosen as part of an E-Rate funding Request. I do not believe this would limit competition, as vendors and applicants would be encouraged to seek review of new and innovative service delivery methods and products. This review process should be ongoing and the list would be routinely updated.

29. The advantage of making the list public would be that applicants would be less likely to select ineligible products or services. The Commission is concerned applicants may choose items on the list to the exclusion of products and services not on the list (see FOYA denials). Because vendors and applicants may submit products and services for review at any time, new and innovative products and services would be continuously reviewed. Also, if the list included eligible percentage amounts, applicants would have more assurance they are requesting funding for only eligible items.

30. With contemplation of eligible services, I ask the Commission to emphasize the concept of economic reasonableness. Also, I ask that the Commission consider U.S.C. 254 (c) (1) (A) when reviewing the list. In particular, the statement "…are essential to education, public health, or ***public safety***…" for inclusion of cell phones on school busses, or telephone lines to security offices in the ESL, as well as E911 charges. Using this as basis for inclusion of all telephone is reasonable. As mentioned above, this will significantly reduce administrative costs.

31. Recognizing that unscrupulous vendors and sleazy consultants represent the majority of fraud and waste incidents, I feel that current PIA review of applicant discount rates is entirely too stringent. For example, PIA currently demands verification of eligible discount percentage assertions that vary only one percent from state supplied numbers. Applicants report specific school lunch numbers to state agencies, but have much greater flexibility when calculating school lunch numbers for E-Rate purposes such as surveys, welfare recipients, aid to families with dependant children, and others. I believe that applications that vary by five percent or less from state supplied data should pass without further scrutiny. Latitude should be given applicants with regard to school lunch numbers. A GAO report recognized that very few applicants deviated from verifiable school lunch eligibility numbers. By implementing this suggestion, administrative costs will be greatly reduced because reviewers will not spend time verifying school lunch numbers. The only exception to this suggestion is for applicants at the 90 percent discount band. Some applicants

near the 90 percent discount band may be inclined to exaggerate school lunch numbers to qualify for the coveted 90 percent discount. Although this problem would be substantially reduced if the Commission adopts my suggestion for internal connection funding.

32. In many cases SLD policy takes FCC and GAO oversight to an extreme and ultimately to the detriment to the program overall. The SLD should have the authority to make common sense corrections for obvious mistakes of applicants. Even the IRS, often compared to the SLD, will correct taxpayer mistakes and refund overpayments when necessary. I believe the balance may be too far on the side of caution, prompted by GAO oversight.

33. Back to the questions at hand. I do not believe that making the list public would negatively affect applicant's choice of products or services. Vendors that wish to participate in the program and expand their markets would ensure their products or services are listed. If a new product is introduced, vendors would push for its approval. If a product or service an applicant is considering is not on the list, the applicant will risk denial and must carefully look at the function of the product or service against the SLD's eligible services framework.

34. The list should be constantly updated as new products and services are presented to the SLD. The SLD should establish a date certain for vendors to submit products for review to be included on the master list when the window opens. For example, August first could be the cut-off for inclusion in the list

update on November 15, the typical opening of the Filing Window. This suggestion would reduce administrative costs as the SLD could keep PIA reviewers on the payroll reviewing products during the normally slow season rather than let temporary employees go and have to hire and train new temps. In the fall. By keeping more full-time employees, the SLD would also improve review continuity as more reviewers would be experienced.

35. The notion applicants can appeal decisions resulting from variations in interpretations of the ESL is unworkable. Currently the backlog of appeals at the Commission is over one year. Applicants, particularly high discount applicants, that are denied funding for choosing products or services SLD deems ineligible have little chance of having a favorable decision rendered during the funding year in which they were denied. Because non-recurring charges for telecommunications services and Internet access are limited to the funding year, applicants that cannot afford to pay full price for services will lose service to during the pendency of their appeal, which typically will not be reviewed during the funding year. This is patently unfair to high discount applicants.

We seek comment on the effectiveness and fairness of our WAN policy, and on whether other policies could result in a more equitable distribution of discounts in the program.

36. The Commission does not allow purchase of WAN equipment because of concerns that E-Rate funding would be used to purchase equipment and build networks. Unfortunately, the definition of a WAN is much too broad, including

simple connections between two schools or entire state networks. Unless the definition can be made more specific, clearly WAN equipment should not be purchased with E-Rate funds. However, if adequate definitions can limit WANs to school districts, regional libraries, or regional consortia, I see good reason to allow purchase of WAN equipment as priority two service at discount rates discussed later. I would limit the size of the purchased WAN, and require that the purchase price be less than lease of comparable service over a period of two to three years. Should the applicant choose to lease a WAN, all vendors should be allowed to supply services not just common carriers. As discussed earlier, the Commission must recognize that the Internet is much more than static pictures and text and prepare for voice and video to be delivered over this new medium. The aforementioned 02-33 proceeding may help with the definition of Internet Access as an "information service" and open to more players and broader service.

37. WANs are recognized as efficient delivery systems for communications within a network. WANs are so economical, many Virginia school divisions have opted to purchase wired and wireless WANs with state and local funds knowing there would be no E-Rate support for their construction. WANs provide a secure network for a single applicant to share information and provides the most efficient way to comply with the Children's Internet Protection Act.

38. I understand common carrier concerns regarding funding for applicant built

WANs and the fact that such a suggestion would stretch Section 254 perhaps beyond defense. These are issues for further debate. I do suggest that if WANs are funded on a priority two level, the applicant would be required to certify that only the applicant would be able to use the WAN facilities and they would not be shared by any other entity.

One possible approach would be to increase the three-year period of time over which WAN-related capital expenses must be recovered through telecommunications service charges, so that the annual burden on available program funds is reduced. We seek comment on this and other possible approaches.

39. At this point let's separate "capital expenses" as defined in the Brooklyn decision and "on premises" equipment as defined in the Tennessee Decision. The Tennessee Decision spoke generally about total cost of the network and more specifically about equipment located within the applicant building as being eligible for funding if part of the leased end-to-end service. I support the Tennessee Decision and encourage no change in current regulations and policies governing "on premises" equipment. The one-time cost for installation of on premises equipment should not be significant enough to have a material adverse impact on priority one funding.

We seek comment on whether a change in our approach to WAN-related expenses is warranted by this increase in demand, and if so, what changes consistent with the statutory restrictions of section 254 of the Act should be adopted to meet the program's goals of improved operation, a fair and equitable distribution of funds, and effective oversight to prevent waste, fraud and abuse.

40. First, Internet access and telecommunications services must remain a priority of this program. The telecommunications Act specifies that telecommunications providers shall provide discounted service to eligible

entities for telecommunications and advanced services. Internal connection eligibility has been hotly debated since the outset. Consequently, with the Fourth Order on Reconsideration, the Commission has given explicit direction that telecommunications and Internet connections shall receive first priority. Now, largely because of the Brooklyn decision, the universe of priority one services has expanded to include items that would not only be considered internal connections but also vendor central office equipment to facilitate WANs. Indeed, both Brooklyn and Tennessee to a lesser extent have opened the door for funding of vendor equipment to deliver eligible services.

41. While it may be in the best interest of the program to include funding for on premise equipment such as routers, the notion of providing funding to build vendor infrastructure for eligible services to the detriment of competitors should be illegal, and is certainly not part of the E-Rate portion of the Act. Current WAN regulations allow universal service funding for vendor owned, central office equipment that will provide service to eligible applicants on a non-exclusive basis. In the confusing evaluation of such applications, the equipment must be necessary to provide service to applicants at the most cost effective basis, yet the equipment must be available for other customers of the vendor. This in effect provides E-Rate universal service dollars to vendors that wish to expand service territories or expand services to areas either served by others or not served at all. Although this may be the intention of the universal service program in general, it has absolutely no basis in law for the E-Rate program. The question remains as to whether the Schools and Libraries

Mechanism is the proper conduit for this type of subsidy. I believe vendor central office equipment should more appropriately be funded through the low-income, high cost division of universal service. Again, when considering funding discounts for WANs, which I feel should be eligible for funding, applications should be evaluated on the basis of economic reasonableness for services ordered. All charges, beyond reasonable installation or connection charges should be folded into monthly contract fees. Again, depending on the outcome of the 02-33 proceeding, non-common carriers could be eligible for high cost low income Universal Service funding in the future.

42. While this comment may appear to be in direct conflict to the previous plea to allow funding for WANs on a priority two basis, I submit that there is a distinction. If WANs are purchased by applicants, the WAN could only be used by the applicant for school or library purposes. To make the separation more distinct, I reiterate that WANs purchased using E-Rate funds could not even be shared with ineligible entities and would be limited in scope and size.

We seek comment on whether we need to modify any rules or policies regarding the eligibility of wireless services for support under the schools and libraries mechanism so that distribution of funds is consistent with our principle of competitive neutrality and does not favor wireline technology over wireless technology.

43. Again, if an ISP provides wireless Internet service, the definition of Internet service is crucial in determining what can be delivered over the airwaves. I believe market forces will push the Commission to an inevitable conclusion that all services should be allowed over the Internet, no matter how it is

delivered. This will also result in drastic changes in the way the Commission views Local Exchange Carriers, long distance carriers, and a whole host of other related issues.

Accordingly, we seek comment on whether a change in voice mail eligibility would improve the operation of the program or otherwise further our goals of preventing fraud, waste and abuse and promoting the fair and equitable distribution of the program's benefits.

44. Yes, allow voice mail and other telephone services not now listed, including wireless, with the exception of directory advertising. Telephone charges to all school and library locations and employees should be eligible. To ensure applicants do not abuse telephone charges and in keeping with the concept of economic reasonableness, the Commission or SLD should establish benchmark levels of acceptable service for applicants of various sizes and direct the SLD to initiate special reviews of requests that exceed the benchmark. Applications subject to special review under this section should be evaluated on the basis of applicant verification of need through the applicants' technology plan. Benchmarks should be related to the number of students served in the case of schools, and number of employees in the case of libraries. As mentioned earlier in these comments, this revision would dramatically reduce administrative costs as reviewers would no longer be required to verify a majority of applicant telephone and cellular charges; rather, reviewers would only review applications requesting excessive amounts of money for telephone or cellular service.

45. It should be noted that teachers are the only class of professionals that

routinely do not have access to telephones in their offices (classrooms). Thanks to four years of E-Rate funding, many more teachers now have telephones in their classrooms giving them greater access to students, parents, administrators, and other teachers. Slowly, schools and school divisions are adding telephone lines into main switchboards, reducing the number of busy signals callers to schools encounter. Finally, PBX's are being purchased or leased or CENTREX service is ordered to maximize efficiency of providing telephone service to teachers. These advances are a direct result of the success of the E-Rate program and evidence of the need for continued funding for the most basic of communications services.

46. On a related note, there is an appeal now before the Commission to allow CENTREX service as a basic telephone service. I support this appeal and ask the Commission to adopt this notion.

We also seek comment on whether, in keeping with our current rules, universal service discounts would continue to be available for a provider only for the cost of access without content, if a service provider offers Internet access to consumers both with and without content.

47. The question is How much content will be allowed. Would filtering be eligible if bundled? That seems to be the case now with some Internet providers. I believe that including content that can be separated as a line item on bills should not be funded under E-Rate.

A pebble creates a small ripple in the ocean but large waves in a small pond

48. One of the shortcomings of the program as currently administered is a lack of accountability at the local level. Competition for E-Rate funds is very much an

"us against them" proposition where applicants are encouraged to go for as much funding as possible. In the grand scheme of things, a single recipient of a large commitment, such as RESD #66 in Phoenix, Arizona, does not impact funding for its neighbor to any great extent, as RESD #66's funding is but a small percentage of the overall $2.25 Billion pot – a small ripple in the ocean. Only when RESD #66 type funding is duplicated numerous times throughout the nation, does demand for funding skyrocket. If the program set aside a guaranteed level of funding for each state, through a formula based on poverty and cost of delivering telecommunications services, the RESD #66's would be competing against other Arizona applicants for its share of the cap – a big wave. In such a scenario other Arizona applicants would no longer cheer the success of RESD #66, who battled Goliath and won, but would bitterly complain that RESD #66 had taken resources that rightfully belonged to them. It would cause localities and states to look introspectively and encourage applicants to be nice, share, and don't take more than one needs.

49. I believe that this approach is the best possible alternative to block grants. Abuse of the program may decrease as states and localities begin self regulating E-Rate funding. State coordinators would have a much larger role assisting applicants and would have a vested interest in reducing program abuse by individual applicants. Also, applicants and state coordinators would be less reluctant to turn in vendors that abused the program.

50. While reducing waste, fraud, and abuse of the program, this suggestion would

increase the administrative burden at both the national and state level. Whether or not this suggestion is adopted, I suggest a stipend for states to coordinate E-Rate awareness programs, application training, and recognize requirements imposed by SLD policies which are not compensated at this point.

We further seek comment on whether, and how, the Administrator and the Commission would verify and enforce compliance, and the extent that such actions promote our three goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

51. The Americans with Disabilities Act is enforced by other government agencies. Schools and Libraries must comply with the Act regardless of E-Rate funding. Certifying compliance with ADA on E-Rate forms would simply be redundant.

We also seek comment on the extent to which a modification such as lengthening the remittance period would have a deleterious impact on eligible schools and libraries that is inconsistent with our three goals of improving program operation, ensuring that the benefits of the program are equitably distributed, and preventing fraud, waste, and abuse.

52. The E-Rate program was established as a discount only program. Because of certain timing issues with commitment letter delivery in the first year of the program, the FCC allowed applicants to pay full price for services and products and seek retroactive reimbursement form service providers through the BEAR process. At the request of applicants and ongoing timing issues, the BEAR process has become a fixture of the program. Unfortunately, some service providers have taken advantage of this allowance by requiring applicants to pay full price for service and receive discounts retroactively. The choice of whether to receive discounted service or retroactive payments should

rest entirely with the applicant, as enumerated in the Act.

53. The reality regarding BEAR payments is that it takes service providers at least 20 days in many cases to issue payments to applicants. Enforcement would be a problem for the FCC for non-telecommunications applicants as the FCC has little jurisdiction over those companies.

54. In addition to applicant choice of BEAR payments or discounts, applicants should be given a choice to receive BEAR payments directly from the SLD. When the FCC opened the BEAR process, it was done without consideration to the Telecommunications Act, rather it was done as a matter of operational reality. Because BEAR payments now must be passed through vendors, some applicants ultimately do not receive funds because vendors go out of business or abscond with the funds. These cases are relatively few, but victimized applicants have been vocal. Using the Form 472, applicants should be given an additional choice to receive retroactive funding directly from the Administrator.

55. Recently, vendors have gone out of business with increasing regularity. BEAR payments made to vendors can be tied up in bankruptcy proceedings for years, and never make it back to applicants in some cases. I urge the Commission to give applicants the choice of either receiving discounts on bills or BEAR payments sent directly to them. This would reduce administrative costs and reduce the burden on vendors as they would no longer be required to pass E-Rate checks on to applicants. Although this suggestion is not explicitly

expressed in the Act, as mentioned above, neither was the BEAR process. Just as BEARs are a procedural necessity, direct payments to applicants should also be considered a procedural necessity.

We seek comment on these and any other proposals to address this issue and thus give us further insight on how, with regard to equipment issues, we might further our goals of improving program operation, ensuring that the mechanism's benefits are fairly and equitably distributed, and eliminating fraud, waste, and abuse.

There's No Place Like Home

56. When I filed comments to the Commission Notice of Proposed Rulemaking for year four, I opposed the notion of funding Internal connections every other year because of the impact the decision would have on ongoing maintenance contracts. I remain opposed to denying funding for internal connections every other year.

57. Like Dorothy in the Wizard of OZ who was able to go home whenever she wanted simply by clicking her heals, the FCC has a regulation in place to adjust demand on program resources – that is 54.509, Adjustments to the Discount Matrix. It states that if the SLD believes subsequent years' demand would exceed available funds, the SLD should recommend changes in the discount matrix to the FCC. To date, no changes in the matrix have been recommended. Unlike the Wizard of OZ, where Dorothy was delivered safely to her bedroom with Toto simply by clicking her ruby red slippers and wishing to go home, the same FCC regulation forbids changing the discount rates for the two highest categories, where most of funding demand exists, leaving all other applicants stuck in OZ with Dorothy's conjured friends. According to

SLD documents, demand for priority one and two services at the 80 and 90 percent levels account for over 70 percent of funding demand. An equitable discount adjustment under current regulations could never be achieved. I propose this regulation be eliminated. Also, examination of Priority One demand for year five shows more demand in the 80 and 70 percent bands than at the 90 percent level, whereas funding demand for priority two products at the 90 percent level dwarfs all other requests. Applicants, consultants, and vendors have obviously discovered where the gold is buried in the E-Rate program and have started mining.

58. After considering issues such as abuse of the program for priority two at the 90 percent level, I conclude that the discount matrix should be adjusted downward for internal connections. This solution would have several advantages. First, fraud and abuse would be drastically reduced because applicants would be required to pay a higher amount for equipment and may not be inclined to purchase expensive, unnecessary products. Second, with a lower discount, more applicants will be funded, as additional funds previously earmarked for 90 percent applications would be committed to more applicants. Finally, shady vendors that use phony grant schemes or inflated prices and kickbacks to effectively give applicants free equipment would cease when required to match 50 percent of the cost. This suggestion should also satisfy common carriers that have objected to funding of internal connections since the beginning of this program.

59. In the event that funds remain after funding Priority One requests, I propose that the highest discount in the discount matrix for internal connections be changed to a flat 50 percent for all applicants. After funding priority one services, Priority Two services should be funded. If insufficient funds are available for all Priority Two requests, remaining funds should be distributed at the 50 percent rate first to recipients of Priority One services at the 90 percent level, then 89 percent, and so on until all funds are exhausted. A minor change in 54.507, Funding Cap regulations can facilitate this suggestion. Adoption of this suggestion would reduce administrative costs as there would be a single discount for all Priority Two services. However, contrary to a suggestion made at the January 30 Schools and Libraries Committee meeting that applicants should be encouraged to separate applications for Priority One and Two services, the Administrator would be required to match Priority Two requests with underlying discount rates if insufficient funds are available for all applicants at all levels. Apparently this will require an administrative system change of some sort. I suggest the Commission direct the SLD to implement such system change immediately.

Finally, we seek comment on any other changes to our rules or policies concerning the appeals procedure of the Administrator or the Commission that might further the goals of improving program operation, ensuring a fair and equitable distribution of benefits and preventing waste, fraud, and abuse consistent with the 1996 Act.

60. We should allow 60 days for appeals. I have asked for this as far back as 1998 (Weisiger comments 7/30/1998, Proceeding 96-45). We should also allow appeals to be postmarked rather than received by the appeal deadline. The FCC

has admitted that some 22 percent of appeals are received after the 30 day deadline. Additional appeals are denied because the SLD received them after the deadline and are ultimately denied at the FCC. Having read many of these appeals, but for the timeliness issue, many appeals had merit and funding would have been restored if the FCC had considered the arguments. Allowing applicants additional time to submit appeals will certainly improve program operation as eligible services for eligible applicants will be funded.

61. While the SLD has made significant strides in reducing the time it takes to render decisions on appeals, the Commission has fallen far behind. Appeals that contain obvious defects or flawed arguments are dismissed in a timely manner but all other appeals can sit at the Commission for a year or more. This is unacceptable. A simple solution would be to reduce the number of denials and thus reduce the number of appeals. This can be accomplished during the data entry and PIA stages of the program.

Toto, I Don't Think we are in (Lawrence) Kansas Anymore

62. In order to make the E-Rate program operate smoothly and efficiently, with reduced denials, all administrative divisions must contribute to the effort. I have serious concerns about the Administrator's contractor in Lawrence, Kansas. I have expressed my concerns in several filings with the FCC as far back as 1998 (Weisiger Comments 7/30/98 proceeding 96-45), and in letters to the Administrator. The Kansas contractor has done the program a grave disservice and has contributed to the perception that the E-Rate program is a

complex bureaucratic mess. Several specific items come immediately to mind. In October 1999 Forms 470 for funding Year Two were not posted on the SLD Web site, in violation of FCC rules. I understand Kansas was responsible for this. During the processing of Year Four applications, approximately 700 Form 471 certifications delivered to Kansas during the filing window were misfiled or simply lost, resulting in what has become known as the "Pink Postcard" issue. Kansas failed to data enter Forms 486 in a timely manner during the summer of 2001 resulting in late rejections of some forms and ultimate denial of funding because of missed CIPA deadlines. Several of those denials are now appeals before the FCC, awaiting consideration. The Rural Healthcare program recently transferred its data entry operation from Kansas to New Jersey. Finally, the E-Rate toll-free help line, operating in Kansas, has been notorious for dispensing bad advice since the beginning of this program. It is imperative for the success of E-Rate that the Administrator require a significantly higher degree of accountability from this contractor, or consider termination of its contract.

Funding of Successful Appeals

We seek comment on all of our current proposals regarding the funding of successful appellants.

63. E-Rate appeals that have been deemed meritorious by the SLD, FCC, or courts should without question be funded immediately. The appeal process was established for applicants to correct mistakes in judgment by SLD staff, contractors or the Commission itself. The appeal process also allows applicants

to bring forth new and novel issues not considered in FCC regulation or SLD policy. Successful appeals have lead to significant changes and improvements in the program, including Copan, Tennesssee, Iowa, Williamsburg-James City, Naperville, and MasterMind to name a few. Appeals that correct errors made by SLD staff or contractors and represent applications that should have been funded in the first place include Joplin, Notre Dame, Hudson Falls, Children's Home Society, and Franklin County to name but a very few.

64. It is disingenuous and contrary to the spirit of E-Rate to ultimately deny funding for successful appeals simply because the fund administrator is incapable of setting aside sufficient funds for pending appeals or incorrectly denies funding to large numbers of applicants. I offer the following solution: Commit funding for successful appeals immediately. Funds should be set aside for pending appeals during the funding year. Should successful appeal demand exceed the supply of set-aside funds, carryover funds from previous years should fund appeals. If carryover funds are exhausted or non-existent, any funds made available through the Form 500 process should be made available for successful appeals. Do not use subsequent years' funding for successful appeals. As in previous comments and petitions before the Commission, I urge the Commission to instruct the administrator to engage the services of a qualified actuary to establish an adequate appeal fund from available funds.

65. In the January 30, 2002 SLD Committee meeting, the committee voted to provide $15 million to fund successful appeals for Year Four. I applaud this

decision, but urge the Commission to establish regulation to ensure sufficient funds are available for successful appeals rather than make this an annual ritual of the SLD Committee. This would be in keeping with provisions of the Act.

1. ***We seek comment on whether, so as to improve our oversight capacity to guard against waste, fraud, and abuse, our rules should explicitly authorize the Administrator to require independent audits of recipients and service providers, at recipients' and service providers' expense, where the Administrator has reason to believe that potentially serious problems exist, or is directed by the Commission. We specifically seek comment on the impact of such a rule on small entities. We further seek comment on alternatives that might provide other assurances of program integrity consistent with the goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.***

66. Requiring applicants to pay for audits is unworkable. If SLD wished to conduct more audits, they would simply deem that additional applicants have "serious problems" with their applications and require the applicant to pay for their audit. Thus far in the experience of applicants subjected to audits, at least one discrepancy is found in each audit. If only a single discrepancy is found, SLD may feel justified in charging the applicant for the audit. I believe that the FCC or SLD should bear the cost of audits. Should fraud be uncovered during an audit, punitive monitory penalties, including the cost of the audit, should be levied against the offender.

We seek comment generally on whether to adopt additional measures to reduce potential waste, fraud, and abuse in the schools and libraries support mechanism. Consistent with our intent to continue strengthening program integrity, we seek input on further rules and procedures to address these matters.

67. Waste, fraud, and abuse are abundant in this program. As mentioned before, the waste, fraud, and abuse originates with unscrupulous vendors and sleazy consultants. Vendors wanting to increase their income, and consultants that work for applicants on a percentage basis result in applications that waste and

abuse program resources. In the MasterMind decisions, the Commission recognized how much influence vendors and consultants have over applicants in the E-Rate program. Such vendors and consultants prey on overworked, understaffed applicants or those unsophisticated in the convoluted rules of E-Rate.

68. First, we must consider the terms used in the NPRM – waste, fraud, and abuse. To date, over four years into the E-Rate program, there has not been a single publicized case of fraud in the E-Rate program. There is currently an investigation within the FCC and SLD where the fraud word has been mentioned. Unfortunately, the investigation is being kept secret so no one outside the FCC, SLD, and the target of the investigation officially knows its identity. Abuse has not been uttered at all.

69. Waste, however has been the basis of several denials and decisions. I recall a meeting in Washington where actions of a certain vendor were being discussed. I called the actions of the vendor fraud. A lawyer for the SLD objected to my use of the word "fraud" in this context because fraud is a legal term. It was clear to me that the vendor was defrauding the E-Rate program or at least the principle of E-Rate. Considering that there is only a single investigation of fraudulent activities in four years of the E-Rate program and that investigation is secret, points to a lack of teeth in enforcement of E-Rate regulations. Evidently, waste or abuse must rise to a very high level in order for the Commission to even consider a fraud charge. Short of actually accusing

a vendor, consultant, or applicant with defrauding the program, the only other logical recourse for the Administrator is the lesser term of waste, which carries no legal stature for punitive enforcement, beyond denying the funding requests presented by the wasteful entity. Certainly waste can not be considered the basis for exclusion from participation in future years.

70. The notion of barring applicants, vendors, or even consultants from the program is unworkable. Once barred, vendors or consultants will simply open new companies, apply for new SPINs, and name new key personnel. I have stated before that no one would ever go to jail because of the E-Rate program. I stand by that statement. Even the current secret investigation will only result in a fine and perhaps negative publicity for the guilty parties, but no jail time. I believe that the Commission should impose significant fines on companies and individuals found guilty of defrauding the program, but waste and abuse simply do not rise to a punishable level.

71. The Commission has legal authority to fine entities under U.S.C. 47 Section 503. Specifically, Section 503 (b)(2)(B and C) state:

> (B) If the violator is a common carrier subject to the provisions of this chapter or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this subsection shall not exceed $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act described in paragraph (1) of this subsection.
> (C) In any case not covered in subparagraph (A) or (B), the amount of any forfeiture penalty determined under this subsection shall not exceed $10,000 for each violation or each day of a continuing violation,

> except that the amount assessed for any continuing violation shall not exceed a total of $75,000 for any single act or failure to act described in paragraph (1) of this subsection.

72. I am not an authority on the law and do not know if the Commission has available other avenues to fine rule violators through other provisions in the United States Code. If this is the only authority for applying punitive damages to violators, there may be an inherent inequity embodied in the law for punitive treatment of common carriers verses non-common carrier E-Rate participants. According to the law common carriers can be fined up to $1,000,000 for each violation but non-common carriers are only subject to a maximum $75,000 fine for each violation. Unless there are additional legal provisions for the Commission to issue substantial fines or the Commission and courts agree that granting of a SPIN with, associated FCC forms, constitute "…other instrument of authorization issued by the Commission" thus allowing non-common carriers into the million dollar fine club, the Commission will be limited to fines of no more than $75,000. If the latter is true, then Congressional action will be needed to increase fines as $75,000 will not deter vendors from defrauding a program that brings them millions in profit. If the Commission can agree on what constitutes fraud and begins fining violators at the million dollar level, fraudulent activity in the E-Rate program will be greatly reduced.

73. The SLD and FCC have issued several denials of funding for applicants that were served by questionable vendors (see MasterMind and Total Telecom decisions). Recognizing the fact that vendors, not applicants are the source of fraud, waste and abuse, the Commission allowed numerous customers of

MasterMind to reapply for funding.

74. In fact, despite the MasterMind ruling by the Commission and associated publicity within the E-Rate community, applicants have continued to apply for funding in Year Four using MasterMind as the vendor of choice (see three appeals on FCC Docket 96-45 filed early March 2002).

75. Part of the reason for such program abuse stems from the complexity of the rules themselves. For those not convinced that the program is complex, consider the following question and find the answer on the SLD Web site:

> How do I get my BEAR (discount reimbursement from vendor) payment if my vendor refuses to pay or goes out of business? Take the next 15 minutes looking on the SLD Web site for the answer.
>
> Give up?
>
> Look in "What's New Archives" February 2001. The program is called the "Good Samaritan" program where certain telecommunications providers agree to deliver BEAR payments for problem vendors.

76. The program is so confusing even the program designers can't keep the instructions straight. Take for example the current instructions for the Form 472 (the BEAR form), under Purpose of Form on the second page, item number three: "The applicant has filed FCC Form 486 (Receipt of Service Confirmation Form) and entered "Yes" in Column (I) of Item 6 of the FCC Form 486 to indicate its intention to submit a Billed Entity Applicant Reimbursement Form."

77. As it turns out there is no Item 6, Column (I) on the Form 486 at all. There wasn't even one in the last revision of the Form 486, which was issued in April 2000.

78. Other examples abound but I believe the general feeling from the applicant community is that E-Rate regulations and their presentation on the SLD Web site foment confusion.

Unused Funds

We seek to develop a record on the reasons why applicants and providers may fail to fully use committed funds under the program. We also seek comment on whether any other program changes would likely result in an increased percentage of committed funds being disbursed each funding year, which will help to reduce the overall amount of unused funds from the schools and libraries mechanism. In the event we adopt additional measures to reduce the existence of unused funds, we seek comment on whether it is necessary to adopt procedures to address a situation in which more funds are committed and used than are available for disbursement.

79. In year one of the E-Rate program approximately $480 million was committed but unspent, according to the January 31 quarterly report filed with the FCC by USAC. The same report indicates that year two committed but unspent funds is approximately $49 million. It should be noted that all applications received on or before March 31, 2000 and successfully completing the review process, were funded for all requests. It should also be noted that year two has not been closed, as a number of commitments and appeals are still outstanding. Therefore, the unspent figure for year two should increase with time. As of December 31, 2001, according to the report, year three unspent funds totaled over $600 million. The deadline for submitting invoices for year three was January 31, 2002. It can be assumed that some portion of the year three $600

million will remain as unspent in due course.

80. There are several reasons for the continued existence of unspent funds. First, timing of the application window deadline precedes budget hearings for most applicants. E-Rate coordinators must anticipate which services will be approved during the budget setting process. Some requests may not be funded by the local school board and not funded – even though the funding request may eventually be funded. Second, delays in receipt of funding commitments - usually well into the following year window – resulting in duplicative applications. Applicants that have not received funding commitments for pending applications may file applications in the subsequent year for those services. When the previous years' application is eventually funded, the applicant will no longer need requested funds for the subsequent year. Third, the current online 471 application form does not allow applicants to take into consideration variations of monthly costs when entering charges. For example, if an applicant has a contract for twelve months and only utilizes service for the school year (9 months) and submits a monthly charge at the contract rate, the online form would figure the total cost at a twelve month rate, rather than the lower 9 month rate, because the funding request is figured on the contract length and not actual months of use. Applicants are not given the opportunity on the online form to adjust the funding request to reflect a shorter period of use. Finally, funding commitments arrive well into the funding year. Applicants for ongoing services may not start services before receiving funding commitments and thus not use all committed funds. Applicants for one-time

charges may not have enough time to install the equipment before the deadline and not use all committed funding. Current regulations stipulate that onetime, nonrecurring charges be taken by September 30 of the funding year, unless the funding commitment was issued after March 1, in which case onetime charges and internal connections may be purchased by September 30 of the following year.

Treatment of Unused Funds

81. I have commented extensively on this subject, in addition to the three Petitions for Reconsideration denied in this Order. Committed-but-unspent funds (called here "unused funds"), should be carried over to subsequent years to be used to 1) fund pending appeals, and 2) increase funding for pending applications. In my comments (Weisiger Comment 4/23/01, Proceeding 96-45) I urged the Commission to classify committed-but-unspent funds carried over to subsequent years as "recommitted" funds and not be counted as initial commitments in a given year. I agree with Commissioner Copps in his comments on the Order that there is no ambiguity with current rules that committed-but-unspent funds should be carried over to subsequent years. I also submit that classifying carryover funds as recommitted does not conflict with the Twelfth Order on Reconsideration.

Petitions on Reconsideration

82. The purpose of my three petitions for reconsideration was to stop the transfer

of almost a half-billion dollars (one quarter of the total commitment) from program recipients to telecommunications carriers. The net effect of the CCB decision was to deny E-Rate funding to some applicants, as funding for internal connections in year one was limited to applicants at the 70 percent or higher discount bands. Had the CCB ruled favorably on these petitions in a timely manner, some of the estimated $448 million year one committed-but-unspent funding could have been directed to E-Rate eligible items.

83. When the Commission finally opened the petitions for comment, most of the Year One money was gone. I commented that telecommunications companies should keep the year one give-back to offset the Ninth Circuit Court decision and limit the burden on carriers (customers that actually contribute to the E-Rate fund). However, the Commission should classify unused funds in subsequent years as "recommitted" funds from the year in which they originate and therefore not count against the funding cap in the year they are "recommitted." I suggest this remains a viable solution, even under the Twelfth Order on Reconsideration. I also applaud Commissioner Copps in his interpretation of the regulations and support of distributing collected E-Rate monies to applicants.

Revising or eliminating outmoded rules

We therefore seek comment on such rules or policies in order to determine whether any are no longer necessary or in the public interest.

84. Section 54.504 should be revised to eliminate the Form 470. I will let others argue the finer points but it should not be a major problem as the Form 470, 28

day waiting period, and Web site posting requirement are not specified in the Act. On a broad note the 470 requirements have been the single largest factor in funding denial and have proved ineffective as a competitive tool. I would add that the posting of applicant information on the Web has increased E-Rate abuse by offering anyone interested in contacting schools a one-stop contact list. This abuse even prompted the SLD to issue a warning against spamming of E-Rate applicants, lest "appropriate action" would be taken. Also eliminate the requirement for technology plans in this section.

85. Change Section 54.505 to reflect a discount rate of 50 percent for internal connections. Simplify discount calculations in this section.

86. Change Section 54.506 to reflect ownership of WANs on a limited, local (maybe regional) basis.

87. Change Section 54.507 to reflect carryover funds shall be considered "recommitted" and not count against the funding cap. Also change (g)(1)(iii) to reflect a discount rate of 50 percent for internal connections and funds shall be allocated based on the Priority One discount rate.

88. Eliminate Section 54.509 Adjustments to he discount matrix.

89. Beef up Section 54.511 (b) for use as a tool against fraudulent vendors or applicants.

90. Change Section 54.518 to allow purchase of Wide area networks on a limited basis.

91. Change Section 54.519 (b) to include a broad definition of Internet access.

There is a Problem with your car or A CASE FOR BLOCK GRANTS

92. When your car is running rough or the gas mileage slips, you take it to your local mechanic for a tune-up – a fine-tune, if you will. After putting in new spark plugs, changing the air filter, cleaning the fuel injectors and adjusting the timing, the car still runs rough. The mechanic attaches diagnostic cables to your engine and the computer spits out a recommendation. Usually, the next order of business is to replace the computer module on your car, which by the way is not eligible for E-Rate discounts. After your car has been in the shop for two solid weeks and every conceivable part has been replaced the team of mechanics that have by now established tidy college funds at your expense, call to inform you that you need a new engine.

93. At this point you have two choices – pay the price or let them keep the car and buy a new one. If you really liked the old car and were emotionally attached to it, you may want to keep it. On the other hand you may be willing to part with the car if it caused you constant frustration during the four years it lived in your driveway.

94. However, to make this little analogy more adequately comport with the NPRM and the reality that the Commission cannot work outside the law, we must provide a third choice. In this scenario the car was actually given to you by your rich uncle, Sam. Uncle Sam gave you the car with the provision that you keep it running for five years at which time you could evaluate its performance

and tell your uncle how it was doing. Based largely on your recommendation, your uncle would ultimately decide what to do with the car. If the car is sitting in the shop waiting for a new engine, you might tell uncle Sam that your car is beyond repair and you recommend he give you a new one.

95. If indeed the conclusion of commentors and the Commission is that the E-Rate car is beyond repair, I suggest it be sent to the scrap heap and a brand new program be established. First, change the entire funding structure. Contributions from interstate telecommunications providers should be eliminated. The current telecommunications excise tax should be reduced by fifty percent and the remaining 1.5 percent tax be used to fund block grants to state departments of education and library boards for distribution to localities in support of telecommunications and Internet access. States would be bound by regulations established by either the National Telecommunications Infrastructure Administration, the FCC, or the U.S. Department of Education and administration from the same or other agency. Considering inherent difficulties with the structure of the FCC as a regulatory body verses an effective administrative agency, I strongly suggest that the FCC not be responsible for administration of the block grant program.

96. With states being held accountable for equitable funding, I guarantee the concept of economic reasonableness would be universally embraced. In Arizona, for example, other localities would never let RESD #66 receive the amount of money they did.

97. This suggestion could require Congressional revisit of the Act, and I offer it only as an absolute last resort. I believe a more workable solution outlined earlier in these comments is the state cap solution, which other commentors will fully detail. If the Commission chooses to keep the administrative structure and current regulations largely intact, I suggest that the Commission open a comment and new NPRM on the notion of block grants.

IV. Conclusion:

98. The E-Rate program has provided schools and libraries with Billions of dollars in discount funding during the past four years for services and equipment that are absolutely essential for effective education of our young people and adequate connectivity for citizens through libraries. In theory, the funding structure of E-Rate to consider local wealth and location as the basis for discounts is commendable. In theory, the contribution mechanisms establishing the discount fund are fair and equitable. In theory, the E-Rate program is a model governmental program, efficiently administered to connect each classroom and every library to information resources.

99. To a large extent the theories have reached their desired ends for many. There is no question that America's poorest schools and libraries have dramatically increased the numbers of classrooms and branches connected to the Internet. There is no question that more teachers have telephones in their offices. There is no question that more schools and libraries have adequate bandwidth to serve their current information needs. There is also no question that if the these

subsidies were to end a dramatic reversal of recent gains would take place because the ongoing monthly cost of adequate bandwidth and additional telephone lines is much to great to be borne by schools and libraries.

100. But at what price?

101. Throughout these comments I have cited individual examples of various regulatory and administrative issues with the E-Rate program. The sum total of each issue is that under the current system, schools and libraries cannot count on receiving discount funding in a given year with any confidence. In some cases even after receiving commitment letters and service has begun, funding is yanked from their grasp – such as some 80 applicants that submitted Forms 486 after the October 28 CIPA deadline.

102. Additionally, the mountain of regulation and changing policies confound and confuse applicants. To successfully navigate the program, each individual applicant must go through the entire process from start to finish, committing at least one hundred hours, or about three work weeks to the program. It does not matter of the applicant is a small library, a small private school or the largest school district in the nation – the E-Rate compliance process must be duplicated each time. Consequently, small applicants, particularly small libraries and private schools make economic decisions that the two or three thousand dollars in discounts they would receive are not worth the effort when considering opportunity costs for limited staffs.

103. This program must be made simpler and more user friendly. The

Administrator must be more in tune with applicant needs and less eager to deny funding because it is overwhelmed with applications or its contractor is incapable of carrying out the simplest of tasks on a grand scale. The FCC and Administrator must recognize the burden its regulations place on applicants and evaluate each regulation and policy not only in the context of the Act, but also on its impact on applicants and vendors.

104. The Commission must recognize states devote considerable resources to comply with FCC regulations and SLD policies. Additionally, many states assist applicants with applications and dissemination of information to schools and libraries on changing E-Rate regulations and policies. In fact, the SLD has acknowledged that state E-Rate representation is key to their administrative strategy. As part of a new administrative plan for E-Rate, one component must be reasonable compensation for the crucial role state education and library coordinators play in the process.

105. Finally, any new regulations promulgated as a result of this proceeding must be issued well before opening of the Year Six filing window of mid November. Based on comments posted thus far, the Commission has a difficult task before it and new regulations will likely be radically different from those currently employed. As such, it is imperative that state coordinators and applicants have a reasonable amount of time to consider the impact of rule changes on new and ongoing contracts or requests for services. I ask that new regulations be adopted no later than October 1, 2002, if they are to be made

effective for the Year Six filing window.

106. It is an honor to play a role in this decision making process at the Commission. Participation at this level would not be possible if not for the Internet. This powerful tool has opened government process and information to the public at an unprecedented rate. In just six years of universal acceptance of the World Wide Web, access to our government, public resources, and public servants has increased more than the previous 220 years of these United States combined. Continued access, even increased access for all citizens will lead to a better informed, more involved public. Without question, subsidies for connections in schools and libraries must continue in some form or another.

107. Those wishing to reply to these comments may send a copy to me using this new communication medium. Please send reply comments to: erate1@aol.com rather than spend excessive sums sending packages of comments through the mail system. The Commission now allows electronic filing, let's use it!

Respectfully Submitted,

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